

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3144 of 1995

with

SPECIAL CIVIL APPLICATION No 5936 of 1995

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For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

RAMLAL K

Versus

FOOD CORPORATION OF INDIA

Appearance in both the Applications :

MR KETAN A DAVE for Petitioners

Ms.Sangita Pahwa for Respondent No.1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 22/09/97

COMMON ORAL JUDGEMENT :

These two Special Civil Applications have been filed by the petitioners, Ramlal K. and R.H. Udasi in Special Civil Application No.3144 of 1995; and Vishnu Nehalchand Panjabi and H.C. Kamdar in Special Civil Application No.5936 of 1995, who were mainly working as Tally Clerks under the Food Corporation of India

(hereinafter referred to as "FCI" for brevity) at Gandhidham for the last more than 28 years. They were declared surplus by memo dated 17.12.1991 issued by the Joint Manager (Port Operation), FCI, Gandhidham. They were directed to exercise option for absorption in category IV posts of FCI or face retrenchment. The petitioners' trade union, viz., All India Trade Union of Food Corporation Employees filed Special Civil Application No.9049 of 1991 challenging the said memorandum. In the course of the said proceedings an affidavit was filed on behalf of the respondent Corporation stating that the pay scale of the petitioners shall be protected and they will get all the benefits of class IV posts. Relevant statement is extracted as follows :

"Since the Tally Clerks are rendered surplus, the FCI has given them option to accept the absorption instead of resorting to their retrenchment. There are only two alternatives left with the FCI - either they accept regularisation in class IV category or they accept retrenchment. Their pay scale will also be protected and they will also get all other benefits in class IV posts which they were hitherto not getting."

"It is denied that the FCI has not shown its readiness to protect pay scales of the Tally Clerks. It is submitted that the pay scale of the Tally Clerks is protected while offering them absorption in class IV category. Thus, Tally Clerks are to be brought from the pay structure of the departmental workers to the pay structure of FCI staff."

2. In view of the aforesaid statement the petition was dismissed as withdrawn by this Court on 22.12.1991. The orders reads as follows :

"Learned counsel for the petitioner states that in view of the following statement in the affidavit in reply, the petitioner seeks permission to withdraw the petition. The relevant part of the averments in the affidavit in reply at page 12 reads as follows :

'It is submitted that the pay scale of the Tally Clerks is protected while offering them absorption in Class IV

category. These Tally Clerks are to be brought from the pay structure of departmental workers to the pay structure of FCI staff.'

Permission to withdraw granted. Disposed of as withdrawn. Notice discharged."

3. It appears that the pay scale of the petitioners was not protected. Therefore, a contempt application was filed before this Court, which was registered as Miscellaneous Civil Application No.1478 of 1994. In reply, respondent Corporation, stated that the pay scale of Tally Clerks is protected while offering absorption in Class IV category. In paragraph 8, it was pointed out that besides pay plus DA the concerned employees will also be entitled to 20 per cent HRA, Tiffin Allowance, Vehicle Allowance, Washing Allowance, Bharat Darshan, Medical Allowance, etc. It was, thus stated that they are not going to suffer any monetary loss because the pay scale offered to them is better than what they are drawing at present. It was, however, disputed by the counsel for the workmen stating that the pay scale offered by the respondent is much lower.

4. Considering the contention raised by the parties, the Division Bench of this Court found that it was not a case of any breach of the statement made in the affidavit in reply filed in Special Civil Application No.9049 of 1991. In view of this, contempt notice was discharged. While disposing of the contempt application, Division Bench observed that if the applicants are aggrieved by the pay scale offered at the time of absorption, it would be open to the applicants to take any other appropriate remedy. After disposal of this contempt application on 25.1.1995, under communication dated 18.4.1995, Annexure 'C' they were asked to give option for absorption in class IV post in FCI as per the conditions laid down by the High Court in Special Civil Application No.9049 of 1991. The petitioners gave option for absorption in class IV which reads as follows :

"In pursuance of the orders passed by the Honourable High Court of Gujarat on 25.1.1995 in Misc. Civil Application No.1478/94 in Special Civil Application No.9049/91, I hereby give option to be absorbed in a class IV post in the FCI, as per conditions laid down by the Honourable High Court of Gujarat in Special Civil Application No.9049/91, 22.12.1991."

5. The petitioners apprehending retrenchment presumably on the ground that they have not given the option for absorption in class IV has filed present Special Civil Applications seeking direction to absorb them in class IV subject to appropriate fixation in the matter of pay and pay scale. The petitioners continued in the pay scale of Tally Clerk in view of interim order passed by this Court dated 24.4.1995.

6. Shri V.S. Pagare, Joint Manager (Port Operations), FCI, has filed an affidavit. It is stated that after disposal of the contempt application the petitioners were once again given option to opt for absorption in class IV posts. The petitioners without exercising the said option have approached the Labour Commissioner by raising similar demands. A supplementary affidavit has been filed by Shri N. Ramchandran, Deputy Manager (General), FCI. It is stated that the petitioners cannot have any grievance as they are being absorbed even though they are declared surplus otherwise and that too their salaries in the absorbed posts will be more than what they are drawing while they were merely Tally Clerks. A rejoinder has also been filed. It is stated that the petitioners withdrew the petition on the understanding that they are ready and willing to get absorbed if their pay scale is protected by FCI. But in fact the pay scale has not been protected. It is stated that instead of protecting the pay scale of Tally Clerk they have been asked to exercise option for absorption in category IV posts of FCI, in the pay scale of Rs.1230-35-1440-45-1755/- . It is stated that the petitioners were in the pay scale of Rs.1130-35-1375-40-1735/- in the month of February 1992, whereas the pay scale available to FCI in the month of April 1992 was in case of Peon was Rs.522-8-538-9-556-10-616-12-688-13-740/- and in case of Jamadar, etc. Rs.644-14-868/- . It is also pointed out that the pay scale of Rs.1130-1735/- was not in existence in the month of February 1992 at the time when FCI filed affidavit in reply in this Court. It is further pointed out that pay scale of Rs.1230 - 1755/- is a new pay scale, as result of subsequent revision. It is further pointed out that in the pay scale of Rs.1230 - 1755/-, sizeable quantum of DA has been merged. Therefore, the pay scale of Rs.1230 - 1755/- has been inflated.

7. It is contended by Shri Ketan Dave, learned counsel for the petitioner that the petition filed by the employees union was withdrawn on a categorical statement

made on behalf of FCI that their pay scale will be protected. After having made the above statement the FCI taking advantage of the revised pay scale is compelling the petitioners to seek absorption in class IV category. On the other hand Ms. Sangita Pahwa, learned counsel for the FCI submits that the controversy does not survive as the petitioners have made grievance with respect to the breach of the statement made in Special Civil Application No. 9049 of 1991 and the said controversy has been settled in the contempt petition. She submits that the petitioners who were the employees of Central Government were retrenched and it was a good gesture of the FCI to accept them as surplus. She has also pointed out that the pay scale of Tally Clerks does not exist and their pay has been protected. Since there is no pay scale of Tally Clerks, they are required to be brought from the pay structure of departmental workers to the pay structure of FCI staff. She has also invited my attention to the statement made by the learned counsel for the petitioner at the stage of issuance of notice by this Court wherein the learned counsel Shri Haroobhai Mehta stated that petitioners will accept absorption in class IV cadre irrespective of the interim relief, which is being granted.

8. I am not impressed with the contention that the controversy raised in these Special Civil Applications has been settled by the Division Bench in the contempt proceedings. Of course, during the said proceedings certain facts with respect to pay scale were noticed by the Division Bench. But for the purpose of disposal of the contempt petition, the Court did not find any breach of the statement made in the affidavit. However, liberty was given that it would be open for the petitioners to take appropriate remedy, if they are aggrieved by the pay scale at the time of absorption. Thus, the real controversy remains as to whether the pay scale of the petitioners as Tally Clerks was protected or not. The relevant paragraph from the reply has been extracted in earlier part of this order.

9. On the analysis, the statement extracted in para 1 can be divided and read in three parts;

- (i) that their pay scale will be protected,
- (ii) that they will get all other benefits in class IV post, and
- (iii) that the Tally Clerks will be brought down from the pay structure of

departmental workers to the pay structure of FCI staff.

So far as the first statement, protection of pay scale is concerned, it is the case of the petitioners that they were in the pay scale of Rs.1130 - 1735/-, the pay scale which was available in the month of November 1992, and the said pay scale has not been protected. There is substance in the contention of the petitioners. The pay scale offered of Rs.1230 - 1755/-, though appears to be higher, is a new pay scale and the figure therein is clearly inflated as DA appears to be merged therein. Therefore, I am of the view that the petitioners have not been protected qua their pay scale of Rs.1130 - 1735/-. So far as parts second and third of the statement is concerned, the petitioners are ready and willing to abide by them.

10. Thus, the petitioners are entitled to continue in the pay scale of Rs.1130 - 1735/- as it existed in 1992 or revised pay scale from time to time, but they can be absorbed in class IV cadre, meaning thereby they will be entitled to HRA and other benefits as available to class IV employees. Part third of the statement that they will be brought down to pay structure of FCI cannot be read in contradiction of part one.

11. In view of the aforesaid both these Special Civil Applications are allowed. The respondents are directed to absorb the petitioners in FCI, in the pay scale of November 1992, i.e. Rs.1130-35-1375-40-1735/- or the corresponding revised pay scale on the usual terms and conditions. Rule is made absolute. No order as to costs.

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